

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

VALENTIN POLYVKO,

Defendant and Appellant.

B232213

(Los Angeles County
Super. Ct. No. BA377915)

APPEAL from an order of the Superior Court of the County of Los Angeles, Gail Ruderman Feuer, Judge. Affirmed.

Jamilla Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury found defendant and appellant Valentin Polyvko (defendant) guilty of corporal injury to his spouse, and the trial court sentenced him to a three-year prison term. On appeal, his appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 requesting that this court independently review the entire record to determine if there are any issues which if resolved in defendant's favor would require reversal or modification of the judgment.

Based on our independent review of the record, we affirm the judgment.

FACTUAL BACKGROUND

On November 16, 2009, City of Los Angeles Police Officer Juan Cobian was assigned to the Hollywood Division. At approximately 11:40 p.m., he responded to 5526 Carlton Way in Los Angeles. He went to an apartment and noticed a five-gallon water bottle broken on the kitchen floor. He encountered defendant, his wife, Irina, and their son George. During his interview with Irina, she told him that when she came home from work, she discovered that defendant had been drinking. Irina then began to drink beer. After she drank three beers, she saw defendant knock over the water bottle in the kitchen. Defendant and Irina began to argue about defendant's intoxication, and he became enraged. The couple's son George stepped between defendant and Irina to protect her. Nevertheless, defendant punched Irina in the side of her face leaving a "red mark" on the left side of her face near her eye. Defendant grabbed Irina's left hand and "smacked it down." At that point, defendant and George became involved in a physical altercation. According to Officer Cobian, Irina stated that it was defendant who called the police. Officer Cobian explained that during his investigation of the incident, he observed that defendant's level of intoxication was "high." Defendant had trouble standing up and speaking. As Officer Cobian attempted to interview defendant, he became upset and

started screaming at Irina. Officer Cobian detained defendant pending further investigation.

On November 6, 2010—the night of the incident upon which defendant’s conviction was based—Magda Seyranyan was the manager of the apartment building at 1743 Garfield Place in Los Angeles. Defendant, his wife, son, and daughter lived in the unit directly above Seyranyan’s ground floor unit. At about 10:30 p.m., Seyranyan heard several people banging on her door and telling her to call the police. Although she was afraid, Seyranyan eventually called the police. During the 911 call, Seyranyan told the operator that “[t]his is the second day somebody hit somebody and . . . now I’m sure . . . [the police should] come because . . . I think she died now inside the car[.] Can you come here please right away”? Seyranyan then explained, “[S]omebody[’s] husband I think killed the wife[.] Please come right away.” When the operator inquired whether a man had killed his wife, Seyranyan replied, “Yes.”

On November 6, 2010, City of Los Angeles Police Officer Jose Lepe was working as a uniform patrol officer in the Hollywood Division. At approximately 10:20 p.m., he and his partner received a radio call concerning an assault with a deadly weapon and they responded to 1743 Garfield Place. At the scene, Officer Lepe observed defendant and his son George. Defendant appeared intoxicated. The officer also met with Seyranyan who told him that Irina was inside a car. Irina was unconscious laying across the back seat of the car. She smelled of alcohol and appeared to be “heavily intoxicated.” Officer Lepe called for an ambulance because Irina was unresponsive.

Officer Lepe then spoke with Seyranyan who pointed to defendant and George and said “he beat her,” referring to defendant. Seyranyan explained to Officer Lepe that defendant and Irina were always fighting and that Irina had told her several times that defendant “slapped and punched her many times.” According to Seyranyan, she had heard sounds of fighting in defendant’s apartment over the last seven months, including Irina screaming for help and the sounds of someone being hit and thrown against the wall. When Officer Lepe spoke with George that night, he observed a scrape on George’s back, and his knuckles “looked like he had punched somebody.” Although

Officer Lepe did not observe any injuries to Irina at the scene, he conducted a follow-up investigation at the hospital during which the doctor and nurse described and showed him her injuries. He observed “fresh and old bruises on [Irina’s] body.”

On November 7, 2010, City of Los Angeles Police Officer Frank Marmolejo was assigned to the Hollywood Division. Around 7:00 a.m., he was directed to proceed to the emergency room at Kaiser Hospital and speak to a victim. At the hospital, Officer Marmolejo spoke with Irina. At first, Irina seemed hesitant to speak with the officer, but eventually she began to answer questions. She told the officer that defendant always beat her up when he drank. The beatings had been ongoing for a year. Irina also told him that she was afraid to call the police. According to Irina, the incident on November 6, 2010, began when defendant and George engaged in a fist fight. When she tried to separate the men, defendant stopped assaulting George and began to punch her with both fists. He punched her in her arms and back, and then threw her on the floor. Defendant also kicked Irina 10 times with his bare foot in her legs and back. At some point, Irina lost consciousness. Irina seemed distraught and fearful during Officer Marmolejo’s interview with her.

On February 3, 2011, at 12:35 p.m., City of Los Angeles Police Officer Colin Langsdale went to Seyranyan’s residence to interview her and serve her with a trial subpoena. Seyranyan told Officer Langsdale that since approximately the summer of 2010, defendant was usually drunk, and he was not as friendly as he had been before. Seyranyan’s bedroom was directly below defendant’s bedroom, and in August or September 2010, she heard “lots of noise above her that sounded like heavy objects being thrown to the ground.” She could hear arguing and yelling, but she could not understand what was being said. The next day, when Seyranyan saw Irina wearing a sling, Irina explained that a door had fallen on her and broke her arm.

Seyranyan also told Officer Langsdale that she heard “arguing and loud bangs a lot,” even when George was not home and before George was released from jail. The fighting became worse after George returned home from jail. On November 6, 2010, Seyranyan heard arguing and loud noises similar to previous noises she heard, as if a

heavy object was dropped on the floor of defendant's apartment. About 15 to 20 minutes later, she saw Irina's sister dragging Irina out to the sister's car. Seyranyan heard noises coming from the apartment's courtyard and saw George running shirtless with two male Hispanic teenagers. His hands were bloody and he had a scratch on his back.

Defendant testified on his own behalf and denied striking Irina on the night of the November 6, 2010, incident or on the night of the November 16, 2009, prior incident. According to defendant, it was George who assaulted Irina on both occasions.

PROCEDURAL BACKGROUND

In an information, the Los Angeles County District Attorney charged defendant with corporal injury to his spouse in violation of Penal Code section 273.5, subdivision (a). Defendant pleaded not guilty. Following trial, the jury found defendant guilty as charged in the information. At the sentencing hearing, the trial court denied probation and sentenced defendant to the middle term of three years. The trial court awarded 302 days of custody credit, consisting of 151 days of actual custody credit and 151 days of conduct credit. Defendant filed a timely notice of appeal.

DISCUSSION

As noted above, appointed counsel filed an opening brief in accordance with *People v. Wende, supra*, 25 Cal.3d 436. We gave notice to defendant that his appointed counsel had not found any arguable issues and that defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wanted us to consider. Defendant did not file a supplemental brief.

We examined the entire record to determine if there were any arguable issues on appeal. Based on that independent review, we have determined there are no arguable issues on appeal. We are therefore satisfied that defendant's appointed counsel has fully satisfied her responsibilities under *People v. Wende, supra*, 25 Cal.3d 436.

DISPOSITION

The judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.